

8839. Adulteration of Meatex Wheat Endosperm. U. S. v. 249 Bags of Meatex Wheat Endosperm. Decree of condemnation. Product ordered released under bond. (F. D. C. No. 15721. Sample No. 617-H.)

LIBEL FILED: March 21, 1945, Northern District of Georgia.

ALLEGED SHIPMENT: On or about November 25, 1944, from Hawthorne, Ill.

PRODUCT: 249 100-pound bags of Meatex Wheat Endosperm at Atlanta, Ga., in the possession of the Nelson Brokerage Co. The article was stored under insanitary conditions after shipment. The bags were rodent-gnawed, and rodent excreta and urine stains were observed on them. Examination showed the product was contaminated with rodent urine and that it contained rodent excreta.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: April 17, 1945. The Nelson Brokerage Co., claimant, having admitted the material allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond for conversion into animal feed, under the supervision of the Food and Drug Administration.

8840. Adulteration of brewer's grits. U. S. v. 3,000 Bags of Brewer's Grits. Consent decree of condemnation. Product ordered released under bond. (F. D. C. No. 15685. Sample No. 31518-H.)

LIBEL FILED: March 26, 1945, Southern District of California.

ALLEGED SHIPMENT: On or about July 21 and August 1 and 2, 1944, from Fort Worth, Tex.

PRODUCT: 3,000 100-pound bags of brewer's grits at Los Angeles, Calif., in the possession of the Pacific Coast Warehouse. The article was stored under insanitary conditions after shipment. Some of the bags were rodent-gnawed, and rodent pellets were observed on them. Examination showed that the article contained rodent pellets, rodent hairs, and insect fragments.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: April 16, 1945. The Acme Brewing Co., Los Angeles, Calif., claimant, having admitted the allegations of the libel, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

8841. Adulteration of rice. U. S. v. 199 Bags of Rice. Decree of condemnation. Product ordered released under bond. (F. D. C. No. 15011. Sample No. 20203-H.)

LIBEL FILED: On or about January 26, 1945, Western District of Missouri.

ALLEGED SHIPMENT: On or about December 4, 1944, from Stuttgart, Ark.

PRODUCT: 199 100-pound bags of rice at Kansas City, Mo., in the possession of the Crooks Terminal Warehouse. The product was stored under insanitary conditions after shipment. The bags were rodent-gnawed, and rodent pellets and urine stains were observed on them. Examination showed that the product contained rodent excreta.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the product consisted in whole or in part of a filthy substance; and, Section 402 (a) (4), it had been held under insanitary conditions whereby it might have become contaminated with filth.

DISPOSITION: February 7, 1945. The Consumers Mill Product Co. having appeared as claimant, judgment of condemnation was entered and the product was ordered released under bond to be brought into compliance with the law, under the supervision of the Food and Drug Administration.

8842. Adulteration of brewer's rice. U. S. v. 37 Bags of Brewer's Rice. Default decree of condemnation and destruction. (F. D. C. No. 13722. Sample No. 59878-F.)

LIBEL FILED: September 27, 1944, Northern District of Illinois.

ALLEGED SHIPMENT: On or about November 15, 1943, by the Walton Rice Mill, Inc., from Stuttgart, Ark.

PRODUCT: 37 100-pound bags of brewer's rice at Chicago, Ill.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of beetles, moths, and larvae.

DISPOSITION: November 9, 1944. No claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

CHOCOLATE, SUGARS, AND RELATED PRODUCTS*

CANDY

8843. Adulteration of candy. U. S. v. Triangle Candy Co., and Bernard G. Kennepohl. Pleas of not guilty. Tried to the court. Count 1 of the information dismissed; verdict of guilty on the remaining 6 counts. Corporate and individual defendants fined \$1,500 and \$500, respectively. Appealed to the circuit court of appeals. Judgment affirmed on certain counts and reversed on other counts; corporate fine reduced to \$1,000. (F. D. C. No. 8757. Sample Nos. 81916-E, 81917-E, 81919-E, 12116-F, 12117-F, 12736-F, 14141-F.)

INFORMATION FILED: January 30, 1943, Southern District of California, against the Triangle Candy Co., a corporation, Los Angeles, Calif., and Bernard G. Kennepohl, vice-president of the corporation.

ALLEGED SHIPMENT: Between the approximate dates of May 8 and August 26, 1942, from the State of California into the States of Washington, Arizona, and Utah.

LABEL, IN PART: "Chocolate Straws," "Walnut-Filled Chips," "Green Mints," "P-Nut Butter Kisses," "Ass't Starlite," or "Sugar Roasted P-Nuts."

NATURE OF CHARGE: Count 1, adulteration, Section 402 (a) (4), the article had been prepared under insanitary conditions whereby it might have become contaminated with filth.

Counts 2 to 7, inclusive, adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of rodent hairs, hairs resembling rodent hairs, other hairs, and insect fragments; and, Section 402 (a) (4), it had been prepared under insanitary conditions whereby it may have become contaminated with filth.

DISPOSITION: Pleas of not guilty having been entered, the case came on for trial before the court on March 30, 1943. At the commencement of the trial, the question arose as to the language of the charge in each count, namely, that the article had been prepared under insanitary conditions whereby it "might have become contaminated with filth." The court ruled that the expression "might have become contaminated" indicated that there was no contamination but that the food in question might have become contaminated because of insanitary conditions, and that the expression "may have become contaminated" presupposed the contamination of the food and accounted for its contamination by the insanitary conditions. A motion was made by the United States attorney to amend the information in each count and to change the word "might" to "may." The court denied the motion as to count 1 since that count did not charge a violation under 402 (a) (3), but it granted the motion with respect to the remaining counts, 2 to 7, inclusive. At the close of the Government's case, the defendant moved to dismiss all counts for failure of proof. The court denied the motion with respect to counts 2 to 7, inclusive, but it granted the motion with respect to count 1, which count was dismissed. The court, in making the ruling, expressed the opinion that there must be actual adulteration of the food in order to rely upon Section 402 (a) (4) of the Act, and that the word "may" should be used in the pleading.

At the conclusion of the trial, the court found both defendants guilty on counts 2 to 7, inclusive. On April 12, 1943, the corporate defendant was fined \$500 on each of those counts, with the fines on counts 5, 6, and 7 to run concurrently with those on counts 2, 3, and 4, and with judgment to be satisfied upon the payment of \$1,500. On the same date, the individual defendant was fined \$250 on each of counts 2 to 7, inclusive, with the fines on counts 4, 5, 6, and 7, to run concurrently with those on counts 2 and 3, and judgment was to be satisfied upon payment of \$500. On April 17, 1943, a notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed on behalf of the defendants; and on August 8, 1944, after consideration of the briefs and arguments of counsel, a decision was handed down by that court,

*See also Nos. 8837, 8976.